

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 03/01/2016

TIME: 04:00:00 PM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM:

CASE NO: **56-2014-00461060-CU-NP-VTA**

CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Demurrer under submission, now rules as follows:

The court grants moving Defendants' Request for Judicial Notice. The court overrules Defendants' demurrer to the 3rd, 4th, 5th and 8th causes of action to the FAC, and strikes the damages prayer from the fifth cause of action.

Discussion:

3rd c/a (Intentional Interference with Prospective Economic Advantage)

The elements of the intentional interference with prospective economic are "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. [Citations.]" *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.

While moving Defendants claim that Plaintiff has failed to allege their specific wrongful acts, non-fraud causes of action, such as this intentional interference cause of action, do not require heightened pleadings. See *Robinson Helicopter Co., Inc. v Dana Corp.* (2004) 34 Cal.4th 979, 993. A pleading need only allege the ultimate facts that constitute the cause of action, not the evidence by which the ultimate facts will be proved at the trial. *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn. 5. Accordingly, Plaintiffs are not required, as Defendants maintain, to identify in the FAC any of the 3rd parties who would derive a future benefit, or the names of customers or vendors/suppliers.

The elements of the 3rd c/a are sufficiently outlined in the FAC, ¶¶45-57; in particular as to element 1 see ¶¶46, 47, as to element 2 see ¶48, as to element 3 see ¶¶49-55 (specifically ¶54), as to element 4 see ¶56, and as to element 5 see ¶57. The moving Defendants are alleged to have been fully aware of

and cooperated with defendant Fein's actions. While only RVLT was involved in the merger and acquisition discussions and signed the non-disclosure agreement, the FAC alleges that Seesmart is a wholly owned division or subsidiary of RVLT (§13), as is Tri-State (§11). And all defendants are alleged to have been acting with the permission and consent of the other defendants, and "collaborated and conspired with each other." FAC §§13-14, 48. So, a contractual relationship between Plaintiff and moving Defendants is alleged, and all Defendants are alleged to have committed intentional acts.

The questions raised by moving Defendants in the Reply brief may be the proper subject of discovery, but do not require sustaining the demurrer. Facts sufficient to support the c/a have been alleged.

4th c/a (Common Law Unfair Competition)

The essence of the common law tort of unfair competition is "the inequitable pirating of the fruits of another's labor and then either 'palming off' those fruits as one's own (deception) or simply gaining from them an unearned commercial benefit." *KGB, Inc. v. Giannoulas* (1980) 104 CA3d 844, 850. See also *Bank of the West v. Sup.Ct. (Industrial Indem. Co.)* (1992) 2 C4th 1254, 1263, stating that the "common law tort of unfair competition is generally thought to be synonymous with the act of 'passing off' one's goods as those of another." From *United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 618:

Common law misappropriation is one of a number of doctrines subsumed under the umbrella of unfair competition. It is normally invoked in an effort to protect something of value not otherwise covered by patent or copyright law, trade secret law, breach of confidential relationship, or some other form of unfair competition. [citations] The elements of a claim for misappropriation under California law consist of the following: (a) the plaintiff invested substantial time, skill or money in developing its property; (b) the defendant appropriated and used plaintiff's property at little or no cost to defendant; (c) the defendant's appropriation and use of the plaintiff's property was without the authorization or consent of the plaintiff; and (d) the plaintiff can establish that it has been injured by the defendant's conduct. [citations]

The FAC contains adequate allegations to support the c/a. § 60 alleges that Defendants unfairly competed by misusing confidential and proprietary information, and poaching key employees, contractors, customers, vendors and suppliers. Defendants are alleged to have passed off Plaintiffs information and property as its own; exploiting the fruits of Plaintiff's labor.

Defendants argue that the 4th and 5th causes of action make the same allegations, but redundancy of a cause of action is not a ground on which a demurrer may be sustained. See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858. There is no support for Defendants' argument that a common law unfair competition claim is preempted by a statutory claim of unfair competition.

5th (Bus. & Prof. Code §17200 Unfair Competition)

Defendants argue that Plaintiff fails to state a cause of action with respect to the UCL claim because it seeks an award of damages. It is true that a "UCL action is equitable in nature; damages cannot be recovered. Civil penalties may be assessed in public unfair competition actions, but the law contains no criminal provisions. (§ 17206.) We have stated that under the UCL, '[p]revailing plaintiffs are generally limited to injunctive relief and restitution.'" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal. 4th 1134, 1144, citations omitted.) "To achieve its goal of deterring unfair business practices in an expeditious manner, the Legislature limited the scope of the remedies available under the UCL. 'A UCL action is equitable in nature; damages cannot be recovered.'" (Tobacco II, supra, 46 Cal.4th at p. 312.) "Injunctions are 'the primary form of relief available under the UCL to protect consumers from unfair business practices,' while restitution is a type of 'ancillary relief.'" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 337 [120 Cal. Rptr. 3d 741, 246 P.3d 877].) As explained by the court in *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163: "'Damages,' as that term is used to describe monetary awards, may include a restitutionary element, but when the concepts overlap, the latter is easily identifiable. Damages for fraud are an example. In a fraud action the court may award as

damages money fraudulently taken from the plaintiff. Civil Code section 3343, subdivision (a), provides: 'One defrauded in the purchase, sale or exchange of property is entitled to recover the difference between the actual value of that with which the defrauded person parted and the actual value of that which he received, together with any additional damage arising from the particular transaction' Thus, while the award of damages may be greater than the sum fraudulently acquired from the plaintiff, the award includes an element of restitution-the return of the excess of what the plaintiff gave the defendant over the value of what the plaintiff received. To that extent the award of damages literally includes restitution." (*Id.* at p. 174, italics added.)

Although the Defendants' point regarding damages is well taken, it does not translate into a demurrer. "The appropriate procedural device for challenging a portion of a cause of action seeking an improper remedy is a motion to strike." (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 385.) The court treats Defendants' demurrer to the fifth cause of action as a motion to strike damages and the motion to strike is granted. However, the UCL cause of action survives demurrer. Given the broad language, the allegations of the FAC properly plead a statutory unfair competition claim. Moving Defendants allege that the FAC contains only conclusions; however, a pleading only needs to allege the ultimate facts that constitute the cause of action, not the evidence by which the ultimate facts will be proved at the trial. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn. 5.)

8th c/a (Fraud)

The elements of a claim for fraudulent concealment require the plaintiff to show that: "(1) the defendant ... concealed or suppressed a material fact, (2) the defendant [was] under a duty to disclose the fact to the plaintiff, (3) the defendant ... intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff [was] unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613. The duty to disclose may be established where there is a confidential relationship between the parties, defendant has made a representation which was likely to mislead due to the nondisclosure, there is active concealment of undisclosed matters, or one party has sole knowledge of or access to material facts and knows such facts are not known to or discoverable by the other party. *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346–347. See *Prakashpalan v. Engstrom, Lipscomb and Lack* (2014) 223 Cal.App.4th 1105, 1130.

While fraud causes of action must be pled with specificity, less specificity is required when the nature of the allegations mean that the defendants necessarily possess full information concerning the facts. See *Committee on Children's Television, Inv. V. General Foods Corp.* (1983) 35 Cal.3d 197, 217.

Here, Plaintiff alleges that the Defendants conspired together, and concealed from Plaintiff their intention to execute a plan to unfairly compete with PQL by poaching employees and taking confidential information. Because the allegations are that the Defendants destroyed and deleted the computer files containing the evidence, Plaintiffs allege that they are unable to plead the particulars of the concealed information. FAC ¶53 and ¶83. The timeframe alleged is from November 2013 to October 2014; during the parties' merger and acquisition negotiations. It is impossible, Plaintiffs allege, for them to know the when and where of each misrepresentation, the who (speaker or listener), or the what. Unlike *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, this is not a case where a false or incomplete statement is alleged. Rather, this is utter concealment. Plaintiffs allege that moving Defendants should have disclosed important facts to Plaintiffs, including its communications with Plaintiff's employees regarding their coordinated defection, and Fein's defamatory statements. While there is no good reason that the specifics of Fein's allegedly defamatory statements could not have been pled, there are other allegations of fraudulent concealment sufficient to support the cause of action.

Plaintiff has alleged a duty to disclose based on a contractual relationship with RVLTL, a relationship between all moving Defendants, and moving Defendants' accompanying fiduciary duty. ¶85. Whether those allegations are true, or supportable, is not for the Court to decide on demurrer.

Notice to be given by clerk.